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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

ASA FARMS, INC., a California corporation and  
 BRAGA RANCH

Plaintiffs,

v.

FRESH 'N HEALTHY, INC., a Delaware  
 corporation, MARK WILLIAMS, an individual;  
 JACK PARSON, an individual; STEVEN CINELLI,  
 an individual; CHAD HAGEN, an individual,  
 SANTOS MARTINEZ, an individual; DON BEAM,  
 an individual; DARRYL NICHOLSON, an  
 individual; RICHARD MAY, an individual;  
 THOMAS COLOGNA, an individual; PRESTWICK  
 PARTNERS, LLC, a California limited liability  
 company; SOLSTICE VENTURE PARTNERS,  
 LLC, a business entity form unknown; VFINANCE  
 INVESTMENTS, a business entity form unknown;  
 FMP VINEYARD, LLC, a New Mexico limited  
 liability company; BUTTONWOOD OPTION,  
 LLC, a business entity form unknown; DW, LLC, a  
 business entity form unknown; M SOLAZZO  
 TRUST 2002; P. SOLAZZO 1998; GIBBONS  
 FAMILY TRUST; BIXLER TRUST;  
 STEIGERWALD TRUST and CARTER TRUST,  
 COMERICA BANK and DOES 2 through 50,  
 inclusive,

Defendants

Case No. C08-00122JF

**[PROPOSED] ORDER RE: OCEANO  
 PACKING COMPANY, LLC'S  
 OBJECTIONS TO STIPULATION TO  
 MODIFY PRELIMINARY  
 INJUNCTION**

**Date: March 21, 2008  
 Time: 9:00 a.m.**

1 OCEANO PACKING COMPANY, LLC, a )  
 2 California limited liability company, )  
 3 Intervening Plaintiff, )  
 4 v. )  
 5 FRESH 'N HEALTHY, INC., a Delaware )  
 6 corporation, MARK WILLIAMS, an individual; )  
 7 JACK PARSON, an individual; STEVEN CINELLI, )  
 8 an individual; CHAD HAGEN, an individual, )  
 9 SANTOS MARTINEZ, an individual; DON BEAM, )  
 10 an individual; DARRYL NICHOLSON, an )  
 11 individual; RICHARD MAY, an individual; )  
 12 THOMAS COLOGNA, an individual; PRESTWICK )  
 13 PARTNERS, LLC, a California limited liability )  
 14 company; SOLSTICE VENTURE PARTNERS, )  
 15 LLC, a California limited liability company; )  
 16 VFINANCE INVESTMENTS, a business entity )  
 17 form unknown; FMP VINEYARD, LLC, a New )  
 18 Mexico limited liability company; BUTTONWOOD )  
 19 OPTION, LLC, a business entity form unknown; )  
 20 DW, LLC, a business entity form unknown; M )  
 21 SOLAZZO TRUST 2002; P. SOLAZZO 1998; )  
 22 GIBBONS FAMILY TRUST; BIXLER TRUST; )  
 23 STEIGERWALD TRUST; CARTER TRUST; and )  
 24 COMERICA BANK, a Texas Corporation, )  
 25 Defendants. )

17 The Court has considered the OBJECTION TO STIPULATION TO MODIFY PRELIMINARY  
 18 INJUNCTION (the "Objection") filed by Oceano Packing Company, LLC ("Oceano"), as well as the  
 19 response to the Objection filed by Fresh 'N Healthy, Inc. ("Fresh") and Oceano's reply. Having considered  
 20 the evidence and arguments submitted by the parties, the Court hereby makes the following findings of  
 21 fact and orders as follows:

22 1. The Stipulation to Modify Preliminary Injunction ("Stipulation")(Docket Number 2), to which  
 23 Oceano objected, sought authorization from the court to sell certain assets of Fresh. Specifically, the  
 24 Stipulation requested permission to sell certain Fresh assets as follows:

25 To Ashman Company, substantially all of the equipment, including  
 26 processing equipment, farm equipment, pumps, irrigation pipes, forklifts,  
 27 trucks, trailers and warehouse and office furnishings located in Gilroy and  
 28 El Centro, California, and trade names and labels Gourmet Veg-Paq, Reda  
 Verde, Ruby Ridge Farms, Truly Vegetarian, Salad Select, and Tesoro  
 Farms for \$525,000; and

1 To Ray Nava, substantially all of the equipment and vehicles located at  
2 Gilroy Machine, for \$60,000.

3 The Stipulation is attached hereto as Exhibit A. The assets sought to be sold by the Stipulation are  
4 hereafter referred to as the "Assets." The Court approved the stipulation permitting the sale of the Assets  
5 to go forward, but did not determine that the sale was lawful or conducted in a commercially reasonable  
6 manner.

7 2. The Court finds that the Assets are presumed to be subject to the statutory trust provision of the  
8 Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. § 499e(c). Fresh has the burden of proving  
9 that the Assets are not subject to the PACA statutory trust; however, it has submitted no evidence showing  
10 that the Assets are not subject to the statutory trust. See Tony Vitrano Co. V. National Produce Co., Inc.,  
11 815 F. Supp. 23, 25 (D.C. 1993)(burden of proving that disputed assets are not subject to PACA trust lies  
12 with purchaser of agricultural commodities).

13 3. Defendant Fresh, its agents, officers, directors, subsidiaries, assigns, banking institutions, and  
14 any and all other persons in active concert with them who receive notice of this order are hereby restrained  
15 and enjoined from dissipating, paying, transferring, assigning or selling any of the Assets. All other  
16 persons or entities that purchased, or agreed to purchase, any of the Assets who receive notice of this order  
17 are also hereby restrained and enjoined from dissipating, paying, transferring, assigning or selling any of  
18 said Assets. Further, Fresh shall retain possession of any Assets which have not heretofore been  
19 transferred, pending further order of this Court.

20 4. All funds received from the sale or transfer of any of the Assets shall be held by Fresh or its  
21 banking institution in a segregated, interest bearing bank account, and said funds shall not be dissipated,  
22 paid, transferred, or assigned in any manner without further order of Court.

23 5. Defendant Fresh, its agents, officers, directors, subsidiaries, assigns, banking institutions, and  
24 any and all other persons in active concert with them, are hereby ordered to provide to all other parties to  
25 this action, the following information, within five (5) days of the date of entry of this order: the names,  
26 addresses, and telephone numbers of all persons who purchased, or agreed to purchase, any of the Assets,  
27 during any auction held on March 11, 2008, or as a result of any other action taken to sell the Assets, and  
28 to provide all other parties to this action with a list of each Asset sold, the price paid (or agreed to be paid)

1 for each Asset, and the name of the purchaser of each Asset.

2 6. Defendant Fresh is hereby further ordered to provide all of the persons who purchased, or agreed  
3 to purchase, any of the Assets notice of this order in the form attached hereto as Exhibit B, within five (5)  
4 days of the date of entry of this order.

5 7. In order for the parties to have sufficient information for the Court to issue further rulings on  
6 this matter, Defendant Fresh is further ordered to provide to all parties to this action, within twenty (20)  
7 days of the date of entry of this Order, the following information: (i) a complete accounting of the amount  
8 and source of funds used to pay (a) its financial advisers, Russell Burbank and the accounting firm Burr,  
9 Pilger and Mayer; and (b) its attorneys from the law firm of Murray & Murray; (ii) a complete accounting  
10 of all monies paid by Fresh to Defendant Comerica Bank, from the date of formation of Fresh to the  
11 present date, including the source of funds used to pay Defendant Comerica Bank; (iii) a complete  
12 accounting of all monies currently held by Fresh in its bank accounts, including, without limitation, all  
13 monies collected by Fresh from the sale of perishable commodities; (iv) a list of current accounts  
14 receivable owed to Fresh from the sale of perishable agricultural commodities; (v) a list of assets  
15 previously owned by Fresh which were transferred or sold by Fresh prior to March 11, 2008, and the  
16 identification of the names, addresses and telephone numbers of all persons to whom the assets were sold  
17 or transferred, and the price paid (or agreed to be paid) by each third party for the asset transferred; and  
18 (vi) a list of the current assets owned by Fresh which have not been previously transferred or sold, together  
19 with the current value of the asset listed on the books and records of Fresh.  
20

21 **IT IS SO ORDERED.**

22  
23 Dated: \_\_\_\_\_

\_\_\_\_\_  
Jeremy Fogel, District Judge

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25 F:\OCA\Fresh 'N Healthy\Pleadings\Objection to Stipulation re Prelim Injunction\Proposed Order on Pld.wpd